

NO. 48065-4-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

ALLEN CHAGLUAK BAKER,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR COWLITZ COUNTY

The Honorable Michael H. Evans, Judge

CORRECTED BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The sentencing court erred by imposing a condition of community custody requiring Mr. Baker undergo a substance abuse evaluation and comply with treatment.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Whether the trial court erred in requiring Mr. Baker to have a substance abuse evaluation as a condition of community custody when the court did not find Mr. Baker had a chemical dependency that contributed to his offense?

C. STATEMENT OF THE CASE

The state charged Allen Baker with a single count of Possession of Methamphetamine. CP 1-2. Mr. Baker moved to suppress the methamphetamine. CP 3-6. The court denied the motion after hearing testimony from one witness, Longview Police Sergeant John Reeves. RP¹ 3-15, 23-25. The court later entered written findings of fact and conclusions of law to support its oral ruling. RP 26-27; CP 11-13.

The parties subsequently provided the court with a documented titled “Stipulations, Findings of Fact, and Conclusions of Law.” RP 28; CP 14-17. Mr. Baker signed the document thereby acknowledging and waiving his right to a jury trial. CP 14-17. The trial court heard the case as

¹ There is a single volume of verbatim report of proceedings for this appeal.

LISA E TABBUT LAW OFFICE

December 30, 2015 - 9:33 AM

Transmittal Letter

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Case Name: State v. Allen C. Baker

Court of Appeals Case Number: 48065-4

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Personal Restraint Petition (PRP)

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Corrected Brief of Appellant

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a stipulated non-jury trial. RP 28-29. The findings of fact explained that Sergeant Reeves contacted Mr. Baker shortly after 11:00 p.m. in front of a vacant theatre. CP 15. Mr. Baker was using the theatre's exterior electrical outlet to charge his cell phone. Mr. Baker, when asked, provided Sergeant Reeves with his name which lead to the discovery of an active arrest warrant. Sergeant Reeves took Mr. Baker to the Cowlitz County Jail for booking. At booking, a ziplock baggie fell out of Mr. Baker's pants. The content of the baggie tested positive for methamphetamine. CP 15. The court found Mr. Baker guilty as charged. RP 29.

There was no finding that Mr. Baker was under the influence of a controlled substance or alcohol at arrest or booking. CP 15-16; RP 29.

At sentencing, the prosecutor asked the court to impose 12 months of community custody with a treatment condition. RP 29-30. Mr. Baker told the court that he "fought with alcohol prior to this and being homeless has had an effect on my conduct at times out there" and his main goal was to "immerse myself in treatment and trying to better myself." RP 30. The court conjectured, "I think probably the most important thing is the alcohol. If you get that alcohol under control, maybe which helps with the homelessness issue and it probably spirals to of [sic] control when you're drinking a lot." RP 31. The court ordered Mr. Baker to serve 6 months in jail followed by 12 months of community custody. CP 22; RP 31. As a

condition of community custody, Mr. Baker had to have a substance abuse evaluation and comply with treatment. RP 31; CP 23.

The court made no finding that Mr. Baker was under the influence of alcohol or methamphetamine while he was in possession of the small amount of methamphetamine. RP 30-31; CP 16. On the judgment and sentence, the court did not mark the check box finding Mr. Baker had a chemical dependency that contributed to his offense. CP 19. The court did not prohibit Mr. Baker from consuming alcohol or marijuana while on community custody. CP 23.

This appeal follows. CP 29.

D. ARGUMENT

The sentencing court imposed an improper substance abuse evaluation and treatment condition as a condition of community custody.

As a condition of community custody, the court ordered Mr. Baker to undergo an evaluation for, and comply with, treatment for substance abuse. CP 23. Because the condition is not crime-related, and was imposed without the statutory required finding that it was crime-related, it should be stricken from Mr. Baker's sentence.

Although Mr. Baker did not object to the substance abuse sentencing condition, sentencing errors may be raised for the first time on

appeal. *State v. Bahl*, 164 Wn.2d 739, 744, 193 P.3d 678 (2008); *State v. Jones*, 118 Wn. App. 199, 204, 76 P.3d 258 (2003). Whether the trial court had statutory authority to impose a specific community custody condition is a question of law reviewed de novo. *State v. Armendariz*, 160 Wn.2d 106, 110, 156 P.3d 201 (2007).

RCW 9.94A.703 sets out mandatory, waivable, and discretionary community custody conditions that the court may impose. Any conditions not expressly authorized by statute must be crime-related. RCW 9.94A.703(3)(f). RCW 9.94A.030(10) defines a “crime-related prohibition” as “an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted.”

Before a court can impose a substance abuse evaluation, it must first find chemical dependency contributed to the offense.

When the court finds that the offender has chemical dependency, that has contributed to his or her offense, the court may, as a condition of the sentence and subject to available resources, order the offender to participate in rehabilitation programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which the offender has been convicted and reasonably necessary or beneficial to the offender and the community in rehabilitating the offender.

RCW 9.94A.607(1) (emphasis added).

The goal of statutory construction is to carry out legislative intent. *Kilian v. Atkinson*, 147 Wn.2d 16, 20, 50 P.3d 638 (2002). When the meaning of a statute is clear on its face, the appellate court assumes the legislature means exactly what it says, giving criminal statutes literal interpretation. *State v. Keller*, 143 Wn.2d 267, 276, 19 P.3d 1030 (2001).

The court did not find substance abuse or chemical dependency contributed to Mr. Baker's offense. At Judgment and Sentence Section 2.1, the court left blank the specific check box:

[] The defendant has a chemical dependency that has contributed to the offense(s). RCW 9.94A.607.

CP 23. Under the plain terms of RCW 9.94A.607(1), the court was required to make such a finding before it could order Mr. Baker to obtain a substance abuse evaluation and follow all treatment recommendations. Based on the record, the lack of the finding is correct.

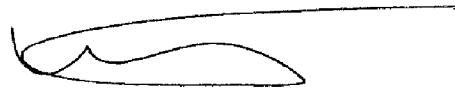
At the suppression motion, Sergeant Reeves did not say that Mr. Baker appeared to be under the influence of alcohol or methamphetamine when he contacted and arrested him. RP 3-15. At sentencing, the prosecutor recommended Mr. Baker have treatment as a community custody condition but he did not explain why he thought treatment was necessary. RP 31. The prosecutor made the recommendation prior to Mr. Baker talking about his prior alcohol use. Mr. Baker's statement that he

had “fought with alcohol” in the past, RP 30, bears no relation to the small baggie of methamphetamine in his possession. The court speculated that alcohol treatment might negate Mr. Baker’s homelessness. But homelessness had nothing to do with Mr. Baker’s conviction for possessing methamphetamine.² Mere possession of a small amount of methamphetamine does not, without more, correlate with chemical dependency. The court correctly acknowledged as such when it found no chemical dependency but erred by imposing a treatment condition of community custody that was not crime-related.

E. CONCLUSION

The substance abuse evaluation and treatment condition of community custody should be stricken from Mr. Baker’s judgment and sentence.

Respectfully submitted December 30, 2015.



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Attorney for Allen Chagluak Baker

² Mr. Baker could just as easily be homeless because of problems associated with finding housing as a register sex offender with six felony convictions. CP 20; RP 30.

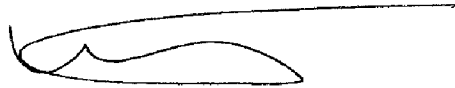
CERTIFICATE OF SERVICE

Lisa E. Tabbut declares as follows:

On today's date, I efiled the Corrected Brief of Appellant to (1) Cowlitz County Prosecutor's Office, at appeals@co.cowlitz.wa.us; (2) the Court of Appeals, Division II; and (3) I've maintained a copy in my file to give to Mr. Baker when I next have contact with him.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed December 30, 2015, in Winthrop, Washington.

A handwritten signature in black ink, appearing to be 'Lisa E. Tabbut', written in a cursive style.

Lisa E. Tabbut, WSBA No. 21344
Attorney for Allen Chagluak Baker, Appellant